IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 200 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SAGAR MANINDERKUMAR CHORASIYA

Versus

POLICE COMMISSIONER

Appearance:

MR NEHUL L DAVE for Petitioner

NOTICE SERVED for Respondent No. 1

Mr. K.G.Sheth, learned APP for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 29/08/2000

ORAL JUDGEMENT

1. The petitioner has filed this petition under Article 14, 22 and 226 of the Constitution of India read with provisions contained under the Bomaby Police Act,

1951, challenging the orders of Deputy Police Commissioner (Crime Branch) Ahmedabad dated 3.12.1999 and orders of the Government dated 1.2.2000 placed at Annexure B and E to the petition under which the petitioner has been externed out from the limits of the Ahmedabad City Commissionarate area, Ahmedabad Rural, District Gandhinagar, Kheda and Mahesana for a period of two years. The petitioner was served with the show cause notice as to why he should not be externed out from the limits of the aforesaid districts on 22.6.1999. The notice is placed at Annexure-A to this petition. Thereafter the order was passed by the Deputy Police Commissioner on 3.12.1999. The petitioner took the matter to the Government in appeal and the aforesaid order of the Deputy Police Commissioner was confirmed on 1.2.2000. Being aggrieved and dissatisfied with the said judgments and orders of the aforesaid two authorities, the petitioner has preferred this petition before this court.

2. It has been mainly contended here that the allegations in the show cause notice were general in nature and the authorities in question did not have adequate material before them for passing order externing the petitioner out of the limits of the said districts. That the witnesses were examined by the petitioner before the Deputy Police Commissioner and the evidence of those witnesses has not been taken into account. That therefore neither of the two authorities had any legal material before them and hence, there was no reason for those two authorities to pass the order of externment of the petitioner. Therefore, the orders passed by the two authorities are illegal and deserves to be quashed and set aside. The petitioner has therefore prayed that present petition be allowed and aforesaid order passed by the aforesaid two authorities be quashed and set aside.

3. Rule was issued at the first instance. Mr. K.G.Sheth, learned APP appears for the respondents. I have heard learned advocate for the parties and have perused the papers.

4. Annexure-A is the show cause notice issued by the Assistant Commissioner of Police on 22.6.1999 which contains two grounds for the externment of the petitioner from the aforesaid districts. First ground is that the petitioner along with the other colleagues used to block the passage of the by-passer and used to demand money from them near Chirag Diamond, Near Zubka Complex, Hirawadi approach road. That the petitioner also used to collect money at the point of knife from the merchants at

that place. The second allegation in the said show cause notice shows that the petitioner used to demand money at the point of knife from the merchants carrying business at Lilanagar Hirawadi. The show cause notice also shows that in the year 1998 the offence was registered against the petitioner for offences punishable under Sections 451, 452, 406 adn 420 of the Indian Penal Code. It has also been alleged that Chapter case No. 178 of 1998 was also filed against the petitioner and security was obtained from him in the said matter. On the strength of the above show cause notice, the matter proceeded and the present petitioner submitted his reply to the said show cause notice on 4.1.1999 at Annexure-B to this petition. Thereafter, trial proceeded before the Externing Authority and the aforesaid orders were passed which were in carried appeal also.

5. Here the question is as to whether the aforesaid authority had material before it for passing the order of externment of the petitioner from four districts. Now, it is very clear that the petitioner had examined 10 witnesses before the Externing Authority. There is no dispute with respect thereto. The copies of some depositions are placed on record of this case. Moreover, even the Appellate Authority's order at annexure-E to the petition shows that the petitioner had examined 10 witnesses.

6. On going through the record, it becomes very clear that neither the original authority nor the appellate authority has taken into account the aforesaid evidence produced by the petitioner in his favour. It was not obligatory for them to consider that evidence favorably but this is a matter in which the defence evidence has totally been ignored by both the authorities. No reason has been shown for not considering the said evidence produced by the petitioner. Mr. K.G.Sheth, learned APP also states that the orders of the two authorities indicate that the aforesaid evidence of the petitioner's witnesses has not at all been considered by the two authorities. It has also been submitted by the learned APP that in aforesaid view of the matter, the present case ban be remanded for reconsideration of the aforesaid evidence of petitioner's witnesses and, therefore, the matter may be remanded to the Government for consideration and decision.

7. This cannot be treated as a solution. It is not the case that the appellate authority only has ignored the evidence of the defence witnesses, even the original authority i.e. Deputy Commissioner of Police has also

not considered the evidence of the said witnesses. Therefore, remand of the matter to the Government will not solve the problem. Even otherwise also this is not a case wherein the authority should be directed to reconsider the case on the basis of the defence witnesses at this stage.

8. Another aspect of the case is that as per the arguments advanced on behalf of the petitioner, the grounds for externing the petitioner are vague in nature. The grounds have been stated hereinabove, the place of event is indicated in the relevant allegations at page 4. So far as the time is concerned, it has been mentioned in the show cause notice that the petitioner was indulging in the aforesaid activities since December, 1998 and notice was issued in June, 1999. Therefore, it covers wide span of nearly six months. This cannot be said to be a time given to the petitioner with respect to the events in question which were stated to be against the petitioner. Therefore, it has to be held that the allegations contained in the show cause notice were of inadequate nature and it did not specify the time at which aforesaid events took place.

9. The petitioner has very clearly stated that the so far as the criminal case is concerned it was the out come of a Civil Suit which has been pending with the complainant of complaint against the petitioner and that aspect has not been considered by the two authorities.

10. So far as the Chapter Case No. 178 of 1998 is concerned, the petitioner has contended that he has been exonerated in the said Chapter proceedings and that aspect also has not been properly considered by the two authorities. This shows that there is non-application of mind on the part of the authorities before whom the matter was placed during the course of trial and hearing. It has also been contended that the statement relied upon by the authorities were not served upon the petitioner. There is no further material on record before us on this aspect of the case.

11. However, it becomes clear from the aforesaid aspects that details were not given to the petitioner to meet with the case. The defence witnesses have not been considered which amounts to non-application of mind. Then there is no non-application of mind with respect to defence about the pendency of civil suit and that the petitioner was exonerated in the previous chapter proceedings.

12. It has also not stated as to what was the material before the two authorities when the aforesaid orders were passed by them. The judgment and order placed at annexure-D shows that the the externing authority considered the material placed before it, but it has not shown as to what was the material which was considered by the said authority for externing the petitioner out of the said four districts.

13. Mr. K.G.Sheth, learned APP states that the names of the witnesses could not be indicated and they were required to be kept away from the record considering the aspect of their security and safety. It has also been stated that the externing authority was not required to disclose the names of the witnesses but at least the material which was placed before him and the material he considered for externing the petitioner out of the said four districts was required to be considered and stated in the order in order to enable the petitioner to know as to what material was going to be considered against him by the said two authorities. This requirement of observance of principle of natural justice which has not been satisfied in the present case.

14. The learned advocate for the petitioner has relied upon the judgment of this Court in the case of Aswin Chandulal Jaishwal Vs. Dy. Commissioner of Police, Vadodara City & Anr. reported in 1989(2)GLR 1429 in which this court held that notice for proposed externment order should contain sufficient particulars in order to enable the citizen to offer his explanation and that should not contain misstatement. Any way, the fact remains that the allegations made against the petitioner did not contain the time of events against him. The other grounds which have been indicated hereinabove which shows that there was non application of mind by the two authorities. In that view of the matter, it is not possible to sustain the order of externment against the petitioner passed by two authorities. Result is that the present petition is required to be allowed and the orders passed by the aforesaid two authorities externing the petitioner out of aforesaid districts are required to be quashed and set aside.

15. For the reasons stated above this application is allowed and the orders passed by the Deputy Commissioner of Police on 3.2.1999 placed at Annexure-D and confirmed in Appeal by the Government on 1.2.2000 placed at Annexure-E are quashed and set aside. Rule made absolute.

(D.P.Buch,J)

(Vipul)